

1 Sara B. Brody (SBN 130222)SIDLEY AUSTIN LLP
2 555 California Street
3 San Francisco, California 94104
Telephone: (415) 772-1200
Facsimile: (415) 772-7400
sbrody@sidley.com

4 Andrew W. Stern (*pro hac application to be submitted*)
5 SIDLEY AUSTIN LLP
787 Seventh Avenue
6 New York, New York 10019
Telephone: (212) 839-5300
7 Facsimile: (212) 839-5599
astern@sidley.com

8 *Attorneys for SMART Technologies Inc.,*
9 *Apax Partners, David A. Martin,*
Nancy L. Knowlton, G.A. Fitch, Salim Nathoo
10 *and Arvind Sodhani*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 THOMAS E. HARPER and DIANE KEENE,) Case No. 11 CV 5232 (SBA)
15 Individually and On Behalf of All Others)
16 Similarly Situated,)

17 Plaintiffs,) **DECLARATION OF ANDREW W. STERN**
18 vs.) **IN SUPPORT OF DEFENDANTS'**
19 SMART TECHNOLOGIES, INC., DAVID A.) **OPPOSITION TO PLAINTIFFS' MOTION**
20 MARTIN, NANCY L. KNOWLTON, G.A.) **TO REMAND**
21 FITCH, SALIM NATHOO, ARVIND) Date: March 13, 2012
22 SODHANI, INTEL CORPORATION, APAX) Time: 1:00 P.M.
23 PARTNERS, MORGAN STANLEY & CO.) Location: Courtroom 1, 4th Floor
24 INC., DEUTSCHE BANK AG, and RBC) Hon. Saundra Brown Armstrong
25 DOMINION SECURITIES INC,)
26

27 Defendants.)
28 _____

1 I, Andrew W. Stern, declare as follows:

2 1. I am an attorney with the law firm of Sidley Austin LLP, counsel for Defendants
 3 SMART Technologies Inc. (“SMART”), Apax Partners, David A. Martin, Nancy L. Knowlton, G.A.
 4 Fitch, Salim Nathoo and Arvind Sodhani (the “SMART Defendants,” and, together with the other
 5 named defendants, “Defendants”). I have personal knowledge of all facts in this declaration and
 6 would, if called upon to do so, testify competently thereto.

7 2. I make this declaration in support of Defendants’ Opposition to Plaintiffs’ Motion to
 8 Remand.

9 3. On January 26, 2011, plaintiff Thomas McKenna filed a putative class action in the
 10 Northern District of Illinois on behalf of the purchasers of the Class A Subordinate Voting Shares of
 11 SMART pursuant to SMART’s July 20, 2010 initial public offering (“IPO”). Attached as Exhibit 1
 12 hereto is a true and correct copy of the original complaint in *McKenna v. SMART Technologies Inc.*,
 13 Case No. 11-CV-583 (N.D. Ill. Jan. 26, 2011) (“*McKenna*”).

14 4. On March 15, 2011, the *McKenna* defendants, including most of the defendants in
 15 this matter, moved, pursuant to 28 U.S.C. § 1404, to transfer *McKenna* to the Southern District of
 16 New York. Judge Edmond Chang of the Northern District of Illinois agreed that New York was the
 17 more convenient forum and, on October 14, 2011, granted the motion to transfer. *McKenna* is now
 18 pending in the Southern District of New York before Hon. Katherine B. Forrest, under Case No. 11-
 19 CV-7673. Attached as Exhibit 2 hereto is a true and correct copy of Judge Chang’s October 14,
 20 2011 order granting the motion to transfer.

21 5. Neither Mr. Harper nor Ms. Keene sought to be appointed lead plaintiff in the
 22 *McKenna* action, nor did their counsel file papers on behalf of any other lead plaintiff candidates.
 23 Attached as Exhibit 3 hereto is a true and correct copy of the *McKenna* docket.

24 6. On June 16, 2011, the *McKenna* court appointed a Lead Plaintiff and approved the
 25 Lead Plaintiff’s choice of Lead Counsel. Attached as Exhibit 4 hereto is a true and correct copy of
 26 Judge Chang’s order appointing Lead Plaintiff and approving Lead Counsel.

27 7. On September 27, 2011, approximately eight months after Mr. McKenna filed his
 28 original complaint, and three months after the appointment of Lead Plaintiff, Mr. Harper and Ms.

1 Keene filed the instant complaint in the Superior Court of the State of California, County of San
2 Francisco, under Index No. CGC-11-514673. On October 26, 2011, Defendants timely removed the
3 action to this Court pursuant to 28 U.S.C. § 1441(a) and SLUSA. On November 9, 2011, Plaintiffs
4 moved to remand this action to state court.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing statements are true and correct.

7 Executed this 2nd day of December, 2011, at New York, New York.

8 /s/ Andrew W. Stern
9 Andrew W. Stern

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28